IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15/07/2003

Coram

The Honourable Mr. Justice P. SHANMUGAM
and
The Honourable Mrs. Justice R. BANUMATHI

A.S. No.987 of 1987 and A.S.No. 1010 of 1987
and
Tr. A.S. Nos.134 to 141 of 1989,
A.S. Nos.493 & 494 of 1989,
Tr. A.S. Nos.493, 494, 496 & 497 of 1996,
and Tr. A.S. Nos.235 to 250 of 2001

A.S. Nos.987 of 1987 :

Kishorelal Asera .. Appellant

-Vs-

Haji Essa Abba Sait Endowments
rep. by its Trustees

1. Ibrahim Sait
2. Iqbal Ahamed
3. Nazeem Issa
4. Niaz Sait
5. Hassan Sait

having office at No.2,
Anderson Street, Madras-1. .. Respondents

PRAYER : Appeals against the judgment and decree dated 25.3.1987 on the file of the XV Assistant Judge, City Civil Court, Madras.

Appearance

A.S. No.987 of 1987

!For Appellant : Mr. S. Vijayaraghavan

^For Respondent : Mr. B.T. Seshadri

A.S. No.1010 of 1987

For Appellant : M/s. Himmatmalmardia

For Respondent : Mr. B.T. Seshadri

Tr.A.S. No.134 of 1989

For Appellant : Mr. S. Vijayaraghavan
For Respondent : Mr. B.T. Seshadri

Tr.A.S. No.135 of 1989

For Appellant : No Appearance
For Respondent : Mr. B.T. Seshadri

Tr.A.S. No.136 of 1989

For Appellant : Mr. S. Vijayaraghavan
For Respondent : Mr. B.T. Seshadri

Tr.A.S. No.137 of 1989

For Appellant : Mr. S. Vijayaraghavan
For Respondent : Mr. B.T. Seshadri

Tr.A.S. No.138 to 141 of 1989

For Appellant : No Appearance
For Respondent : Mr. B.T. Seshadri

A.S. No.493 of 1989

For Appellant : Mr. B.T. Seshadri
For Respondent : M/s. Himmatmalmardia

A.S. No.494 of 1989

For Appellant : Mr. B.T. Seshadri
For Respondent : Mr. S. Vijayaraghavan

A.S. Nos.493, 494, 496 & 497 of 1996

For Appellant : Mr. S.S. Trivedi
For Respondent : M/s. Himmatmalmardia

Tr.A.S. Nos.235 to 249 of 2001

For Appellant : Mr. B.T. Seshadri
For Respondent : No Appearance

Tr.A.S. No.250 of 2001

For Appellant : Mr. M.S. Sundararajan
For Respondent : Mr. B.T. Seshadri

:J U D G M E N T

P.SHANMUGAM, J.

Defendants are the appellants. The plaintiff namely Haji Essa Abba Sait Endowments, represented by its Trustees, obtained a decree for ejectment from the various shop portions occupied by the defendants in the suit premises bearing Door No.37 (Old No.100), Godown Street, Madras-600 001. Aggrieved by the common judgment, the above appeals have been filed. The parties are described as per their rankings in the suit.

2. The facts of the case are as follows :-
Haji Essa Abba Sait, by Ex.A.1, Trust Deed dated 1.5.1919, dedicated the properties mentioned in the trust deed for the purpose of performing the following charities :
(1) Of founding and maintaining a Madarasa for the benefit of members of the Kutch Memon and other Mohammedan communities in Madras;
(2) To give them sound religious, secular education in Arabic, Persian, Hindustani according to Hanafi, Shafi, Hambali and Maliki and other religious branches of education that is of special benefit to the members of the Kutch Memon and other Mohammedan communities; and
(3) Establishing a Musafirkhana or Chatram in George Town for affording residence for travellers of Mohammedan community of all sects.

The properties mentioned in the Schedule to the Trust Deed were dedicated for the said purpose. In order to equip and maintain the said Madarasa in a condition of efficiency, the trustees have to apply the balance of gross rental collections from the properties mentioned in the schedule to the trust deed. The suit property, namely the premises bearing Door No.37 (Old No.100), Godown Street, Madras-1 is one such property dedicated to the Trust. The trust deed was registered. The Board of Management of the Trust was formed and it was registered under the Societies Registration Act on 10.10.1922.

3. The plaintiff is a public trust and are the owners of the suit premises. The Board of Revenue (Urban Land Ceiling and Urban Land Tax) granted total exemption to the plaintiff from payment of urban tax by order dated 22.6.1980, Ex.A.3 under Section 27(1) of the Urban Land Tax Act on being satisfied that the institution is a charitable institution under the control of the Tamil Nadu Wakf Board subject to the condition that the lands are specifically used for the purpose of the institution. The plaintiff, being a public charitable trust, is exempted from the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 by virtue of the Government Order in G.O. Ms.No.2000 dated 16.8.1976 passed under Section 29 of the said Act.

4. The defendants are tenants occupying different portions of the premises on a monthly rent of various amounts, the tenancy being according to the English calendar month.

5. The suit building is situated in Godown Street, in the heart of Madras City and is predominantly a textile market. The suit building is

admittedly nearly 95 years old and the total rent received from 20 tenants is approximately Rs.7,000/- and taking into account the present market condition and the value of the property in the locality, the Trust decided to put up a new building and make a profitable use of the said building. The plaintiff issued notices to the defendants terminating the tenancy and the same was acknowledged. The defendants have neither given a reply nor have they complied with the demand of vacating the premises. Therefore, the suit came to be filed for a direction to quit and hand over vacant possession of the portion in occupation in premises bearing Door No.37 (Old No.100), Godown Street, Madras-1 and further directing the defendants to pay damages for use and occupation.

6. The defendants did not dispute the character of the Trust as a Public Charitable Trust. According to them, the exemption will not apply to the plaintiff Trust as the suit building is a massive structure of four storeys with a total built-up area of about 20,000 sq.ft. and demolition and re-construction of the same is an unwise decision. They have put the plaintiff to strict proof of their claim that the rent in that area would fetch at the rate of Rs.4 to Rs.5/- per sq.ft. and contend that the claim of damages at that rate would be unsubstantiated and arbitrary. They have also pleaded that the notice of termination is bad in law and not in accordance with the provisions of the Transfer of Property Act.

7. The learned City Civil Judge, Chennai, in his common judgment, framed separate issues in all the 17 suits and granted a decree directing the defendants to vacate and hand over vacant possession of the premises to the plaintiff. However, the relief sought for a direction to pay damages for use and occupation was negatived. Aggrieved by the judgment and decree, the tenants/defendants have preferred 17 appeals and the plaintiff, aggrieved by the rejection of their claim for damages, has filed separate appeals. By an order dated 20.2.2001, a learned single Judge of this Court had directed all these appeals to be listed as early as on 12.3.2001 and the matter was listed and common arguments were advanced in all the appeals.

8. Learned counsel appearing on behalf of the defendants/appellants submitted that the notice and the plaint are defective inasmuch as the plaintiff has not described the respective portions in occupation of the defendants properly. According to them, though the exemption has been granted from the purview of the Rent Control Act to the plaintiff Trust in respect of the suit building, having chosen to set out the reasons for eviction, they are under a bounden duty to establish the same. According to them, there are no records to show that the Trust is active and that resolutions and actions were taken in accordance with law and further, the names of the present Trustees are not properly set out in the cause title. It is submitted that there are no materials to claim damages at the rate of RS.4/- per sq.ft. Learned counsel has pleaded that they should be granted sufficient time to vacate their premises in case the order of eviction is confirmed.

9. Mr. B.T. Seshadri appearing on behalf of the plaintiff, on the other hand, submitted that there is no controversy or dispute in reference

to the identity of the property. According to him, there was no reply to the suit notice and no serious objection was raised in the statement as to the identity of the property in occupation by the defendants. He further submitted that the exemption granted by the Government cannot be questioned in these proceedings. According to him, no reason need be given for seeking a termination of tenancy. He further submits that the building is situated in the heart of the city in a textile market and the defendants are squatting on the property for decades together by paying paltry sums of Rs.200/- and Rs.300/- as rents. He submits that in order to carry out the object of the Trust and to run and maintain the school and provide the amenities as enjoined in the trust deed, the Trust requires income and therefore, they have rightly decided to put up a new building in the place of the dilapidated, hundred years old structure. According to him, there is absolutely no justification for granting further time, since the suit itself was presented in the year 1983 and it came for trial in the year 1987 and somehow or other, the matter has been dragged on for the past 17 years in the High Court itself. Insofar as the appeals filed by the plaintiff are concerned, learned counsel fairly concedes that the claim for damages for use and occupation was not substantiated by evidence and that he may not be in a position to substantiate the grounds of appeal.

10. We have heard the counsel and considered the matter carefully.

11. The following questions arise for consideration :-
(i) Whether the suit notice and the suit are bad for want of identification of the property ?
(ii) Whether the plaintiff is entitled to get a decree for eviction ?

12. The fact that Haji Essa Abba Sait Endowments is a public charitable trust is not in dispute. The counsel at the bar have conceded on the nature and the charitable disposition of the Trust. The fact that out of the various properties endowed for the benefit of the Trust, the property at No.37 (Old No.100), Godown Street, Madras-1 is one such property also is not in dispute. The further fact that the defendants are in occupation as tenants of the Trust for several decades is also not in dispute. The foremost objection is as to the failure to specify the exact description of the property in the suit notice as well as in the plaint. Also, the facts that the tenancy was on an English calendar month basis, the lease being from month to month and termination of the tenancy was sought for by giving notices granting 15 days' clear time is also not in controversy. The notices have stated as follows :-

"My clients are the owners of the premises at No.37, Godown Street, Madras-1 and you are a tenant occupying the portion on a monthly rent of Rs. /-."

In the plaint, it is stated that defendant is a tenant occupying a portion of the premises on a monthly rent and the prayer is for a direction to the defendants to quit and deliver possession of the portion in its occupation in the premises at Door No.37 (Old No.100), Godown Street, Madras-1. The

Schedule of Property as stated in the plaint is extracted below :-

"Shop portion in premises bearing Door No.37, Godown Street, Madras-600 001, C.D. No.19, bounded on the North by the property comprised in Survey No.1128, on the South by the property comprised in Survey No.1179, on the East by the property comprised in Survey Nos.11175 and 11176 and on the

West by Varda Muthiappan Street, Madras-600 001 bearing R.S. No.11120, O.S. No.3105 situated in the Registration Sub-District of Madras Sowcarpet and Registration District of Madras."

13. The plaintiff has proceeded to describe the premises as a shop portion in the premises at Door No.37 (Old No.100), Godown Street, Madras-1. It is not in dispute that no separate numbers are given to the 17 tenants or the premises occupied by them. All of them have shown their occupation as shop portions in the premises at Door No.37 (Old No.100), Godown Street, Madras-1. It is also not in dispute that no rental receipts or deed are produced before the court by either side and there is no dispute that in none of these documents, any description other than the one as shop portion at Door No.37 is given. They had been paying rents and dealing with the owner of the premises all these 40 to 50 years without any difficulty or objection. In other words, the identity of the property is that of the name of the tenant occupying a shop portion in the premises at Door No.37. The tenants were identified by their names and occupation of a portion. There is no difficulty in identification of the premises occupied by the tenants especially when they have not raised any objection at the stage of notice or in the written statement or even in the grounds of appeal before this court. Order VII, Rule 3 of the Code of Civil Procedure says that in case the subject matter of the suit is an immovable property, the plaint shall contain a description of the property sufficient to identify it. As pointed out earlier, insofar as the suit property is concerned, the same had been sufficiently identified and there is no controversy regarding the same. Therefore, we have to hold that the main objection raised appears to be an after-thought made for the first time in the course of the arguments. We have no hesitation in rejecting the said contention and holding that at no stage there was any difficulty or objection as to the identity of the suit property.

14. The objection on behalf of the defendants is that the suit is not maintainable, since on the date of the trial, there was only one Trustee out of the five Trustees of the plaint Trust and the remaining existing Trustees ought to have been impleaded. In this context, it has to be pointed out in paragraph 1 of the plaint reads as follows :

"Plaintiff is Haji Essa Abba Sait Endowments, a public charitable trust and also registered under the Societies Registration Act, having its office at No.2, Anderson Street, Madras-1 and is represented by the Trustees above mentioned and the plaint is filed in the name of the Trust joining all the Trustees for the time being."

The defendants have not raised any objection as to the representative capacity of the Trustees in their written statements. In the evidence, P.W.1, who was

the elected Secretary of the Trust, has stated that at the time of filing the suit, there were five Trustees and at the time of giving evidence, only one among them is the Trustee and the others are not Trustees. The suit was filed on 25.2.1983 and the evidence was taken some time in September, 1986. Order XXXI, Rule 1 C. P.C. dealing with the representation of beneficiaries in suits concerning property vested in Trustees says that the Trustee shall represent the persons so interested. This provision does not disentitle a person who happens to be a Trustee from suing for and on behalf of the Trust. A Trust not being a legal person is not entitled to sue in its own name. Therefore, in a suit for evicting the tenant from the Trust premises, the Trustees jointly or any one of them, when authorized in that behalf by the rest of them, can maintain the suit. Rule 2 of Order XXXI C.P.C. says that where there are several Trustees, they shall all be made parties to a suit against one or more of them. There is a distinction drawn between a suit filed by the Trust and the suit against the Trustees. Therefore, if the objection of the appellants/defendants is to be sustained, then their appeal not being against all the Trustees must fail. The appellants had not sought for the particulars from the Trust as to the Trustees as on the date of filing of the appeal. The Trust Deed, Ex.A.1 recognizes five Trustees. The Memorandum of Association also consists of a Governing Body consisting of five members. There is no dispute as to the fact that at the time when the suit was instituted then, all the existing five Trustees were representing the Trust. However, any change of the Trustee when the office falls vacant would not mean that the Trust is not represented properly for want of correct cause title. The court has the power to accept any of the Trustees to represent the Trust in a suit concerning the property vested with the Trust.

15. The Trustees have also registered themselves as a Society and the management of the affairs of the society is entrusted to the Governing Body. According to the appellants/defendants, the suit should have been filed by competent persons under the Societies Registration Act. We do not find any merit in the submission. The plaintiff is the Trust and is represented by the Trustees and for its management, a Society is formed, consisting of a Governing Body. In this context, the judgment of a learned single Judge of this Court can usefully be referred to. In Rajan Devasahayam vs. Hindus tan Bible Institute of India [1996 (1) L.W. 533], the plea that the plaintiff in that case is not a Trust, but only a Society and therefore, cannot claim exemption under G.O. Ms. No.2000 dated 16.8.1986 was negatived. The learned Judge has, rightly in our view, held that the plaintiff is a Trust though it is also a Society registered under the Societies Registration Act.

16. The suit property consists of ground and two floors and the total area of construction is about 9,405 sq.ft. The rent collected from the 20 tenants is approximately Rs.7,850 per month. The building is said to be more than 100 years old and is in a very bad condition. The Trust also depends on the income from this building. The Trustees have decided to put up a new building by demolishing and reconstructing the existing one. It is in evidence that the Trust would be benefited in case of a new construction and the expected rent as per the evidence given in the year 1986 is Rs.40,000/- per month. Therefore, the plea of the plaintiff that they intend to put the Trust property to better use by demolishing and putting up a new building in

order to obtain more income and to perform the activities of the Trust in a better manner cannot be in any manner assailed. In other words, the case of the Trust for eviction is reasonable and acceptable, considering the 100 years old building, the meagre income and the need to meet the object of the Trust. We find that the evidence of P.W.1 in this regard is creditable and we have no reason to disbelieve it or require further proof. Ex.A.3, the letter addressed to the Land Commissioner for Urban Land Tax exemption contains the particulars of the institutions and the provisions made. The relevant portion of the same is extracted hereunder :

"Midday Meals is also supplied to almost all the students. A choultry is run next to the school building; where travellers are allowed to stay for 3 days free of any charges. Fans and other amenities are provided in the rooms, for the convenience of the travellers.
A Free School is run from Standard I to Standard VIII where free books, Note books, Slates and other requirements are given free to all the children. Bullock carts are provided to get children from nearby areas, while bus and Train Passes are given free to those from distance places. Scholarships to the tune of about Rs.20,000/- is also given to students studying in other schools colleges."

17. The Government of Tamil Nadu has granted an exemption to public and charitable trusts. The order of the Government in G.O. Ms. No.20 00, Home dated 16.8.1976 is as follows :-

"[No.II(2)/HO/4520/76. - In exercise of the powers conferred by Section 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (Tamil Nadu Act XVIII of 1960) and in supersession of the Home Department Notification No.II(2)/HO/3811/74, Public, at page 444 of Part II-Section 2 of the Tamil Nadu Government Gazette, dated the 21st August, 1974, the Governor of Tamil Nadu hereby exempts all the buildings owned by the Hindu, Christian and Muslim religious public trusts and public trusts and public charitable trusts from all the provisions of the Act."

The above said order came up for consideration before the Supreme Court in S. Kandasamy Chettiar vs. State of Tamil Nadu [A.I.R. 1985 S.C. 257]. The Supreme Court, while upholding the power of the Government and the Government Order, held that the buildings belonging to such public religious and charitable trusts clearly fell into a class where undue hardship and injustice resulting to them from the uniform application of the beneficial provisions of the Rent Control Act needed to be relieved and the exemption granted will have to be regarded as being germane to the policy and the purpose of the Act. Their lordships held that the State Government may have felt that the Trustees of such buildings should be able to have effective eviction without being required to fulfill other onerous conditions which must be complied with by private landlords when they seek eviction by such purpose. Their lordships also held that the State Government, on materials before it, came to the conclusion that the fair rent fixed under the Act was unjust in case of such buildings and it was necessary to permit the trustees of such buildings to recover from the tenants, reasonable market rent and if that be so, non-eviction without reasonable market rent, if not paid, would be

unreasonable. The reference to the judgment of the Division Bench of this Court in P.N. Raju Chettiar vs. State of Tamil Nadu [1970 (1) M.L.J. 249], wherein their lordships held that the remedy by way of exemption under Section 29 is not a substitute for the remedies available to a landlord for eviction under the Rent Control Act will not be of any assistance. That was a case where the tenant unsuccessfully challenged the exemption granted by the Government, preferred a writ appeal and their lordships, on merits found that the court cannot sit in judgment over the findings and the exercise of power under Section 29 as to the bonafide requirement. As rightly pointed out, the defendants have not challenged the order of exemption granted in the said Government Order.

18. For the above reasons, we hereby confirm the judgment and decree of the court below insofar as it directs the defendants/appellants to vacate the shop portions from the suit premises and hand over vacant possession. The appeals preferred by the defendants, viz. A.S. Nos.987 & 1010 of 1987 and Tr. A.S. Nos.134 to 141 of 1989, 493, 494, 49 6 & 497 of 1996 and 250 of 2001 are dismissed with costs. The appeals preferred by the plaintiff, viz. A.S. No.493 & 494 of 1989 and Tr. A.S. Nos.235 to 249 of 2001 are dismissed, however in the circumstances, without costs. The connected C.M.Ps. are closed.

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Index : Yes
Internet : Yes

To
1. The Registrar,
City Civil Court,
Chennai (With Records).

2. The Record Keeper,
V.R. Section,
High Court, Chennai.